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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,871	06/25/2003	Peter C. Kempf	1478 US	2113

20346 7590 01/23/2004

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PATENT DEPARTMENT
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[REDACTED] EXAMINER

PAPE, JOSEPH

ART UNIT	PAPER NUMBER
3612	

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/602,871	KEMPF ET AL.	
	Examiner Joseph D. Pape	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4,5,7-12,14,15,17 and 18 is/are rejected.
- 7) Claim(s) 3,6,13 and 16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 June 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>11/21/03</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 8-12, 14, and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Nohr et al.

Nohr et al. disclose the claimed invention including vehicle body panel 4, flexible layer 3 and inflator 6 with conduit 7. The body panel and flexible layer being sealed by welding and the conduit comprises a port through the body panel. The arrangement can be used to form a vehicle hood as set forth in the abstract.

Note that, according to Websters II New Riverside university Dictionary 1984, "flexible" is defined as being "capable of being bent or flexed" which property element 3 of Nohr et al. clearly has as shown in the figures.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nohr et al.

Nohr et al. disclose the claimed invention except that the elements 4 and 3 are welded together instead of attached with adhesive.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the body panel and flexible layer of Nohr et al. with an adhesive instead of welding as an obvious choice of a notoriously well known functionally equivalent fastening means which involves no new or unexpected results.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nohr et al. as applied to claim1 above, and further in view of Fisher.

Nohr et al. disclose the claimed invention except for the inflator being a pressure accumulator rather than a pressurized gas storage device.

Fisher discloses an airbag arrangement which is inflated by a compressed gas cylinder as set forth in the abstract.

It would have been obvious to one skilled in the art at the time the invention was made to substitute the compressed gas storage device for the pressure accumulator of Nohr et al. as an alternate, functionally equivalent and notoriously well known, as taught by Fisher, airbag inflation device which involves no new or unexpected results when used herein.

Allowable Subject Matter

8. Claims 3, 6, 13, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references are generally related to the current invention with Ryan et al. of particular relevance in that in Figure 2B, the hood element 21 may be considered to be a flexible layer attached to body panel 22.

10. The following is an examiner's statement of reasons for allowance: The primary reason for the indication of the allowance of the claims in this application is that the prior art does not disclose a pedestrian protection device, as set forth in the preambles of both independent claims 1 and 11, including a transparent flexible layer or the flexible layer being attached to the body panel by a vacuum in combination with the other features set forth in the independent claims

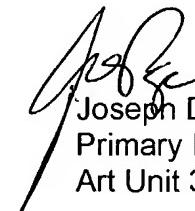
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (703) 308-3426. The examiner can normally be reached on Tues.-Fri. (6:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


Joseph D. Pape 1/27/04
Primary Examiner
Art Unit 3612

Jdp

January 20, 2004